

In a Writ of Error upon a Judgment given in the Common-Pleas, and afterwards affirmed in the Queen's-Bench in an Ejectment brought by *Philip Hunt* Lessee of *Richard Gwyllim*, Plaintiff;

A G A I N S T

Edward Bourne and *Margaret* his Wife, *Andrew Fryzer* and *Mary* his Wife, and *Mary Merrick*, Widow, Defendants.

The CASE of *Richard Gwyllim* the Lessor of the Plaintiff.

14. Feb. 14. Jac. 1. *Thomas Andrews* settled the Lands in Question upon the Marriage of his Daughter *Mary*, To the use of himself and Wife for Life, and afterwards to the use of the said *Mary* his Daughter, and the Heirs of her Body, begotten by *John Gwyllim*.

John Gwyllim married *Mary Andrews*, and has Issue by her *Tho. Gwyllim*.

Tho. Andrews and his Wife dye, and *John Gwyllim* and *Mary* his Wife enter, and are seized in Tayl.

John Gwyllim and *Mary* his Wife dye, leaving Issue *Tho. Gwyllim*, who enters and is seized in Tayl.

And Fines having been usually levied in the Court of Ancient Demesne *Thomas Gwyllim*, and *Mabell* his Wife, 29. May 1646. levy a Fine of the premises, which had not before been usually demised, to *William Nurse* and *Sarah* his Wife, and *John Nurse* their Son, for term of their Lives, by which (the Demise not being Warrented by the Statute) the Estate Tayl was discontinued for that Term.

2. June 24. Car. I. *Thomas Gwyllim* levies a Fine of the Reversion in the said Court of Ancient Demesne to the use of himself and his Heirs.

1. Nov. 24. Car. I. the said *Tho. Gwyllim* by deed Enrolled grants the said Reversion to *Thomas Payne* and his Heirs.

9. Nov. 1649. the said *Tho. Gwyllim* releases all his right to the said *Tho. Payne* and his Heirs.

23. June 1663. *Tho. Gwyllim* dyes leaving Issue *Tho. Gwyllim* his Son and Heir, who has Issue *Richard Gwyllim*, the Lessor of the Plaintiff.

20. Sept. 1661. *Tho. Payne* the Grantee of the Reversion under whom the Defendants claim dyed.

Sarah Nurse the last Life upon the Demise by the first Fine dyed 17. Sept. 1693.

Richard Gwyllim the Lessor entered 2. Sept. 1693.

Ejectment brought in the Common Pleas in *Hillary Term*, 1693. and judgment for the Plaintiff, *Trinity Term*, 1700.

Error brought in the Kings-Bench *Trinity Term*, 1700. And judgment Affirmed in *Trinity Term*, 1703.

The Question and reason of the Judgment.

T *Thomas Andrews* being seized in Fee of the Lands in Question which lie in the Parish of *Kings Cople*, in the County of *Hereford*, and are held of the Mannor of *Wormlow* in the said County, which is Ancient Demesne of the Crown did on the 14th day of Feb. in the 14th year of King *James I.* convey the same to *Tobias Payne*, and *Philip Andrews*, and their Heirs, To the use of him the said *Thomas Andrews*, and *Elleanor* his Wife, for their Lives, and after their decease, To the use of *Mary Andrews* Daughter of the said *Thomas Andrews* and the Heirs of her Body by *John Gwyllim*, begotten, and to be begotten, and for want of such Issue to the Heirs of the Body of the said *Mary*, and for want of Issue of the said *Mary*, To the Heirs of the Body of *Elizabeth Tompkins*, another Daughter of the said *Thomas Andrews*, and the Heirs of the Body of the said *Elizabeth*, with divers Remainders over the Remainder to the right Heirs of the said *Thomas Andrews*.

After the making of this Settlement, the said *John Gwyllim* married the said *Mary Andrews*, and had Issue by her *Thomas Gwyllim* their Eldest Son, and afterwards and before the 29th of May Anno Dom. 1646, *Thomas Andrews* and *Elleanor* his Wife dyed, and the said *John Gwyllim* and *Mary* his Wife entered, and were seized in Tayl of the Premises in the right of the said *Mary*, with Remainders over as aforesaid, and dyed before the said 29th of May 1646.

After the death of the said *John Gwyllim* and *Mary* his Wife, *Thomas Gwyllim* their Son entered and was seized in Fee Tayl, as aforesaid.

Fines have been levied time out of mind of the Lands held of the said Mannor of *Wormlow*, in the Court of Ancient Demesne, held for the said Mannor, and 29. May 22. Car. I. Anno Dom. 1646. the said *Thomas Gwyllim* the Father, and *Mabell* his Wife, levied a Fine in the said Court of Ancient Demesne, according to the Custom there, whereby they granted the Lands in Question to *William Nurse* and *Sarah* his Wife and *John Nurse* their Son, for term of their Lives, and the Life of the longest Liver of them, under the yearly Rent of 6l. But the Rent reserved was not the Ancient Rent, neither had the said Lands at any time before been usually Demised, so the Lease was not Warrented by the Stat. 32. Hen. 8. and consequently made a Discontinuance.

By Virtue of this Fine the Lessees entered, and were seized, and the said *Thomas Gwyllim* being seized of the Reversion of the Premises he and his Wife, 2 June 24. Car. I. Levied a Fine sur Connusance de Droit come ceo of the same Lands in the said Court of Ancient Demesne, To the use of himself and his Heirs, and by his Deed of Bargain and Sale enrolled, dated 1st. November 24 Car. I. conveyed the said Lands to *Thomas Payne* and his Heirs, under whom the Defendants Claim; and by his Deed bearing date 9. Nov. 1649. did release all his Right, Title and Interest in the said Lands, unto the said *Thomas Payne* and his Heirs.

The said *Thomas Gwyllim*, about 23. June 1663. dyed, leaving Issue *Thomas Gwyllim* his Son and Heir, of full Age, who had Issue *Richard Gwyllim*, the Lessor of the Plaintiff.

Thomas Payne the Grantee of the Reversion, dyed 20. Sept. 1661. and from him the Reversion descended to *John Payne* his Son, and from *John* to the Defendants, and both *Thomas* and *John*, and the Defendants have respectively received and enjoyed the Rent reserved upon the Estate for three Lives granted by the first Fine.

The last Life upon this Demise by Fine Expired 17. Sept. 1693. by the Death of *Sarah Nurse*.

The said *Richard Gwyllim* 27. Sept. 5. W. & M. entered and made a Lease of the said Lands to *Philip Hunt*, the Plaintiff, who in *Hillary Term*. Anno Dom. 1693. brought this Ejectment in the Court of Common Pleas, and after the Case (being found specially) had been solemnly argued several Times Judgment was given for the Plaintiff by the unanimous Opinion of the four Judges there in *Trinity Term*. Anno Dom. 1700.

AND a Writ of Error was brought upon it in the Kings-Bench the same Term, and after several Arguments, there the Judgment was affirmed in *Trinity Term* 1703, by the unanimous Opinion of the Judges in that Court.

The only Question of this Case is if *Richard Gwyllim*, the Lessor of the Plaintiff, who claims as Issue in Tayl under a Settlement made upon the Marriage of his Ancestor, may lawfully enter after the Determination of the Estate for three Lives, granted by the First Fine, for it is not pretended that a Fine levied in a Court of Ancient Demesne will barr an Estate Tayl at this day, and it was adjudged that the Entry of *Richard Gwyllim* was lawful, and not taken away by the Statute of Limitations for the first Fine made a Discontinuance of the Estate Tayl, and took away the Entry of the Issue in Tayl, during the Lives of the Lessees; and the grant of the Reversion, by the second Fine, did not make a Discontinuance in Fee, and consequently when the last Life expired 17. Sept. 1693. the Discontinuance was determined, and the right of Entry revived, and therefore *Richard Gwyllim*, the Issue in Tayl, might lawfully enter, and is not barred by the Statute of Limitations, because the Statute allows twenty years after his right of Entry accrewed, and the right of Entry did not accrew till 1693.

And for these Reasons it is humbly hoped that the Judgments of the said Courts shall be affirmed.

T. Powys.
R. Eyre.